



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date Introduced:	02/18/11	Bill No:	Assembly Bill 1307
Tax Program:	Sales and Use	Author:	Skinner
Sponsor:	BOE	Code Sections:	RTC 6070.5
Related Bills:		Effective Date:	01/01/12

BILL SUMMARY

This BOE-sponsored bill would authorize the BOE to refuse to issue a seller's permit to any person who has an outstanding liability with the BOE and has not entered into an installment payment agreement, as specified.

ANALYSIS

CURRENT LAW

Under existing law, Revenue and Taxation Code Section 6005 defines a "person" to include, among others, any individual, firm, partnership, joint venture, limited liability company, association, corporation, or any other group or combination acting as a unit.

Section 6066 requires that every person desiring to engage in business as a seller within this state to apply for a seller's permit with the BOE. There is no fee for obtaining a seller's permit and the permit is valid indefinitely as long as the applicant maintains a business as a seller and is in good standing with the BOE.

Under Section 6070, whenever any person fails to comply with any provision of the Sales and Use Tax Law, including timely payments of amount due, the BOE may revoke the person's seller's permit. However, before revoking a seller's permit, the BOE is required to provide a 10-day advance written notice to the taxpayer of the time and place of a hearing to be held and the taxpayer must show why the permit should not be revoked. This provision specifies that the BOE shall not issue a new permit after the revocation of a permit unless it is satisfied that the holder of that permit will comply with the provisions of the Sales and Use Tax Law.

Section 6069 requires a seller whose permit has been previously suspended or revoked to pay a reinstatement fee of \$100 to the BOE for the renewal or reissuance of a permit.

Section 6701 provides the BOE with the authority to require, whenever it deems necessary to insure compliance with the Sales and Use Tax Law, that a person file a security deposit with the BOE. A security deposit is generally requested in cases where the taxpayer has a history of noncompliance. The maximum amount of security the BOE may require, however, is \$50,000, and it must be released by the BOE after a three-year period in which the person has filed all returns and paid all tax to the state.

Under Business and Professions Code Section 22971 (which is under California's Cigarette and Tobacco Products Licensing Act of 2003, administered by the BOE), the terms "control" or "controlling" are defined to mean possession, direct or indirect, of the power:

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- (A) To vote 25 percent or more of any class of the voting securities issued by a person.
- (B) To direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, as specified; however, no individual shall be deemed to control a person solely on account of being a director, officer, or employee of that person.

PROPOSED LAW

This bill would add Revenue and Taxation Code Section 6070.5 to the Sales and Use Tax Law to provide that the BOE may refuse to issue a seller's permit to any person who has an outstanding liability with the BOE and has not entered into an installment payment agreement.

In addition, the bill would authorize the BOE to refuse to issue a seller's permit if the person desiring to engage in or conduct business as a seller within this state is not a natural person or individual, and any person "controlling" the person, as defined in Business and Professions Code Section 22971, desiring to engage in or conduct business as a seller within this state has an outstanding final liability with the BOE.

The bill would require the BOE to provide the person who applied for a seller's permit who was refused a permit pursuant to this provision, a notice, as specified, and allows the person to request reconsideration that will afford the person a hearing, as specified.

The bill would become operative January 1, 2012.

COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by the BOE in order to give the BOE more discretion in issuing seller's permits to taxpayers that have outstanding, unpaid, delinquent tax liabilities with the BOE, and to provide those taxpayers with a sound, reasonable incentive to take care of these outstanding liabilities by requiring them to simply enter into, and comply with, an installment payment agreement, as a prerequisite to obtaining a new seller's permit. This would allow the BOE the discretion to withhold issuing a permit to a person under the most common scenarios involving taxpayer non-compliance the BOE encounters.
- 2. Issue.** California's sales and use tax system is one based on the principal of voluntary compliance. Most retailers are honest and generally comply with the tax laws. However, the BOE's number of overdue accounts receivable, as well as the overall balance, continues to increase - further complicating the state's budget woes. Within the last three-year period, the BOE's accounts receivable balances for unpaid *final* liabilities (liabilities that are due and not under appeal) have nearly doubled. As of the end of 2010, these outstanding liabilities totaled over \$1.5 billion.

Recent economic turmoil is one factor contributing to this increase. However, other reasons include the fact that some businesses purposefully fail to remit the tax, such as when a taxpayer diverts the sales tax reimbursement collected from a customer for his or her own purposes instead of remitting the tax to the State. This bill would provide an additional tool that would assist the BOE in reducing its growing outstanding accounts receivable balances from taxpayers' failure to remit the taxes that are owed.

- 3. This bill addresses different situations.** This bill would apply when a taxpayer applies for a new seller's permit while failing to resolve an outstanding tax debt with the BOE under his or her current seller's permit account. It could also be used when the BOE revokes a taxpayer's seller's permit because of the taxpayer's noncompliance with the law, and the taxpayer applies for a new seller's permit under a different type of entity.

For example, if the original seller's permit was held by a sole proprietor and that permit was revoked by the BOE because of the taxpayer's noncompliance with the Sales and Use Tax Law, current law does not allow the BOE to refuse to issue a seller's permit if the sole proprietor creates a corporation and applies for a seller's permit under the name of the corporation.

However, any taxpayer with a non-final liability, such as one under appeal, would still be able to obtain a new seller's permit while continuing to exercise the rights and remedies available to all taxpayers with non-final liabilities.

- 4. The bill also gives taxpayer a right for a hearing.** To ensure fair treatment of taxpayers, this bill would provide that any person denied a seller's permit due to an outstanding final liability under this provision would be granted a hearing regarding the manner. Such a hearing would be consistent with hearings that taxpayers currently avail themselves when the BOE is contemplating revoking a taxpayer's seller's permit under current statutory authorization. These hearings are typically handled at the district office level by the administrator of that district office. Under this provision, the person denied a seller's permit would be required to file a written request for reconsideration within 30-days of the written notice of denial.
- 5. Installment payment agreements take into account a taxpayer's financial situation.** An installment payment agreement allows taxpayers to pay the full payment of their debt in smaller, more manageable amounts. Installment payment agreements generally require equal monthly payments, and the amount of an installment payment is based on the amount a taxpayer owes and his or her ability to pay that amount. If the liability is over \$5,000, taxpayers are required to submit a financial statement, to help the BOE determine the amount a taxpayer can pay. If a taxpayer's financial situation changes to a degree necessary to change the installment amounts, whether it improves or worsens, the BOE will make necessary adjustments to the amounts required to be paid.

COST ESTIMATE

The BOE would incur absorbable costs to administer this bill.

REVENUE ESTIMATE

This bill would allow for an additional collection tool that may be used under limited circumstances. Additional revenue due to taxpayers entering into installment payment agreements is expected to be minor, with the potential to increase over time as more taxpayers enter into installment payment agreements. This revenue would be limited to collection of outstanding final liabilities and should help to decrease outstanding accounts receivables under specific limited circumstances.

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